IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3344 OF 2003

Shri Jaywant Kaluram Zate & Ors. ..Petitioners

V/s.

State of Maharashtra & Ors. ..Respondents

Mr.A.V.Anturkar for the petitioners.

Mr.R.S.Apte Special Counsel with A.P.Vanarase Assistang Government Pleader for Respondent Nos.1 & 2.

Ms.Deepa Chavan alongwith Kiran Gandhi,Vinay Bhate and Pratibha Mehta i/by Little & Co. for Respondent No.3.

Mr.Uday Warunjikar for Respondent No.4.

Coram : R.M.LODHA & R.S.MOHITE,JJ

Date : 5.5.2005.

PC

. Heard.

2. The learned Advocate for the petitioners does not dispute that the controversy raised in this Writ petition is wholly and squarely concluded by the Division Bench Judgment of this Court in Writ petition No.1790 of 2004, M/s.Dhananjay Samaj Seva Sanstha Shri Swami Samarth Adhyapak vidyalay Vaibhavwadi V/s. National Council for Teacher's Education & Anr. decided on 16th March, 2005. He

however, submits that the Division Bench Judgment of this Court dated 16th March, 2005 (supra) has been carried in appeal before the Supreme Court.

3. The Division Bench in Writ Petition No.1790 of 2004 decided on 16th March 2005 held thus :-

> 6. Section 14 takes into account a situation. That there existed institutions offering or imparting a course or training in teacher education before the Act came into force. If there was such an institution and if it wanted recognition under the Teacher Education Act it was bound to make an application in such form and the manner prescribed by the regulations. The proviso makes it clear that such institutions which were in existence before the Act came into force were entitled to continue such course or training after if it has made an application for recognition within six months from the appointed day and until the disposal of the application by the Regional Committee. The Act therefore in respect of a class of institutions which were existing when the Act came into force and which had sought recognition under the Act, by virtue of the proviso were entitled to continue till the disposal of the application by the Regional Committee. Sub-section (5) on the other hand makes it clear that when the institutions had applied and had been refused permission they were bound to discontinue the course or training in teacher education from the end of the academic session next failing the date of receipt of the order refusing recognition under clause (b) of Sub section 3. A reading of the Section would not be that an institution desirous of opening a course after the Act has come into force can admit students and continue to impart education until the application is rejected or putting it conversely to admit students even before recognition is given and if then recognition is granted to treat such recognition as if it was

given on the date of application. To our mind such a direction in respect of institutions which desires to start a course in teachers training after the Act has come into force would be defeating the very intent of the Legislature. At the highest the provisions can be read in respect of institutions which were already in existence meaning imparting education in teaching when the Act came into force and had applied for recognition. By no stretch of imagination is it possible to construe the Section so as to include institution which were not in existence when the Act came into force but after that have applied for recognition and before recognition is granted admit students to a course. This is further made clear by looking at some other provision of the Act. Under Section 16, it is provided that notwithstanding anything contained in any other law in force no examining body shall on or after the appointed day grant affiliation were provisional or otherwise to any institution or hold examination were provisional or otherwise for a course or training conducted by recognised institution unless the institution concerned has obtained recognition from the Regional Committee concerned under Section 14 or permission for a course of training under section 15. Sub sections (3) and (4) of Section 17 provide the consequences of withdrawal of recognition of a recognised institution. Under sub section (5) of section 14, an institution for which recognition is refused shall discontinue the course as set out therein. On order being passed under sub section (4) every examining body under section 16(6) shall grant affiliation or cancel affiliation in cases whenver recognition is refused. All this only means that when there were institutions existing and affiliated, then on the application for recognition under the Act their affiliation could be granted under the new Act or cancelled depending on recognition being given under Section 14(4). It is impossible to visualise a situation that the examining body as defined under section 2(d) will permit students to appear for an examination, if the institution is not affiliated or permit a batch of students to appear for the

examination though ultimately the recognition is refused.

7. Various regulations have been made, setting out the conditions for recognition and permission to start new course or training under the Teachers Education Act. Amongst others, it is required that for eligibility, the candidates must get 50% marks in aggregate in the H.S.C. Examination. The selection procedure is then set out which is based on performance in qualifying examination and NCTE Test and interview to be conducted by Agency, State Government/Institutions provided by NCTE. There are various other provisions which we did not propose to refer to. Suffice it to say that admission of students has to be based on the criteria as set out in the regulations. It is therefore clear that no institution can admit students without following rules and regulations and without being affiliated to the Body conducting examination. This would be an additional factor to hold that institution cannot admit students without following the criteria as laid down in the regulations. The object of the Act itself is to provide for the establishment of a National Council for Teacher Education with a view to achieve a planned and co-ordinated development of teachers education throughout the country and for the proper registration and maintenance of norms and students in the teachers education system and for matters connected there with. If we consider all these aspects it will be clear that this would mean that no institution before it is granted recognition and before it is affiliated to a Body which conducts examinations can on their own either pending recognition or on the belief that they would be recognised admit students to a course. If they do so it is on their own risk. We must note the growing practice of institutions even if they have no permission or recognition first admitting students and there after either making students to approach the Court to point out the hardship which is being occasioned. To our mind the extra ordinary jurisdiction of this Court is not meant for such institutions or for students who get themselves admitted to a course in institutions which has not been

> recognised on the day they are admitted. The consequences must follow even though they may seem to be harsh on the students, specially in the cases where subsequently permission is granted. Apart from the Teachers Education Act, the State of Maharashtra has enacted. The Maharashtra State Council of Examination Act, 1998. It provides for the establishment of State and Regional Councils. Its powers are set out under section 23. One of its powers is to accord affiliation, to appear for examination conducted by the council, provided the institutions applying with the conditions for according affiliation.
>
> 8. In the instant case apart from the fact that the permission was granted for the ensuing academic year 2004-2005 there is no material before us to show whether the students were admitted based on examinations conducted as per the regulations or whether they fulfilled the requirements in terms of the regulations. Even otherwise as the institution was not affiliated to the State Council in our opinion this would not be a fit case where any relief can be granted to the petitioners.

4. We share the concern expressed by the Division Bench that there is growing practice of institutions in admitting the students without there being any permission or recognition of such institution. There is mushroom growth of educational institutions without such institutions having been recognised by the competent authorities and the State. For these un-recognised and un-authorised educational institution, education is not a pious thing but a commercial venture. The time has come that such unauthorised institutions are dealt with heavy hands and no latitude is given to the institutions which had taken law into their own hands and played with

the precious years of the students by giving them admission without there being any recognition or permission from the competent authorities.

5. The writ petition, therefore, must fail in the light of the decision referred to above.

6. We accordingly dismiss the Writ petition in limine. However, liberty is granted to the petitioners to apply for re-calling the order if the Judgment dated 16.3.2005 passed by the Division Bench in Writ petition No.1790 of 2004 is reversed, set aside or modified by the Supreme Court.

(R.M.LODHA,J)

(R.S.MOHITE,J)